

Chairman James Henderson called the meeting to order at 6:35pm at the Harpswell Community TV Studio on the Mountain Road. The meeting was taped and broadcast live. The agenda was published in "The Times Record" on August 22, 2001. Henderson introduced the members present: John Papacosma, Howard Nannen, Linda Toothaker, Don Rogers, and associate member Robert White. Planner Tony Dater and Planning Assistant Debora Levensailor were also present. Henderson presented former long-time chairman Robert White with a plaque in appreciation for his service to the Planning Board and the Town of Harpswell.

Thomas and Carrie Kusza, Reconstruction of Non-Conforming Structure, Commercial Fisheries I, Tax Map 17-24, Basin Point Road- Thomas Kusza thanked the Board for holding a special meeting to hear their case and one other. Joe Waltman represented Thomas and Carrie Kusza, and presented their application. He said they are proposing to move the existing 1,000 square foot cottage, and build a 2,600 square foot house. Waltman said he did not calculate the overhangs or ramp into the figures, and he wants an amendment for a deck off the living room. He said that they had originally planned to attach the "new addition" to the existing cottage, in its present location, but that they now felt it would make an "awkward house". Therefore, they are proposing to move the existing cottage back, remove any non-conforming parts, and to construct the new home onto it. This would move the new home to within 64' of the high water mark. He said the applicants are requesting a year-round home, and want to preserve the views. Waltman stated, "I believe these rules (ordinances) were inflicted on the Kuszas rather than anything they did."

Henderson asked for public comment. Maureen Saxton, a direct abutter, cited the following concerns: (1) according to the Harpswell Shoreland Zoning Ordinance, conversions of seasonal residences to year-round residences are not allowed in Commercial Fisheries I, and (2) she is unclear as to whether or not a driveway has been identified and would like to make sure that the drive, shed, ramp, and newly reconstructed home do not exceed the 20% lot coverage. She asked the Board, "Is the house being moved to be conforming? Is the deck that was put on a few years ago figured into the calculations?" She further stated, "We'd appreciate having all of the setbacks met. We have water and septic concerns....Will there be a basement? We're concerned about blasting."

Waltman stated, "It doesn't say you can't expand it seasonally. If they didn't use the living room in the winter, they could expand it 30%." Henderson stated, "Any conversion to seasonal in CFI is not allowed." Waltman stated, "The Zoning Ordinance is newer than the Kuszas have been here. They've been here longer." He wanted to know if the Kuszas could appeal the ordinance (SZO Land Use Table 1, Section 18) which says that the seasonal conversion is not allowed in CFI. Waltman stated, "If we were to add a structure, not move it, and not add a basement, we could do it with no Planning Board approval. That isn't an impossibility....The rule as it's stated would force a situation which is less conforming....We're saying, from that point of view, there's room for interpretation and that's why we're here."

The Board reviewed options, including leaving the structure as a seasonal home, but Mr. Kusza said they were not interested in leaving it as a seasonal structure; they want to build a year-round home. The Board discussed the prohibition of seasonal conversions in the Commercial Fisheries I Shoreland District as stated in the Basic Land Use Ordinance Table (BLUO 13.3.19) and the

Shoreland Zoning Ordinance Land Use Table 1, Section 18, extensively, and how the prohibition applied to the Kusza application. Henderson stated, "We have to go by the ordinances. We could not allow a year-round conversion." The Board reviewed Codes Enforcement Officer Carl Adams's memo dated August 29, 2001. CEO Adams raised the following concerns: (1) that the proposed full basement/foundation, as part of an expansion, will extend beyond the exterior dimensions of the building as it existed on March 14, 1992, and will not meet the expansion exemption criteria stated in the SZO Section 10.3.1.2.1. The memo stated that the area and volume of the non-conforming section of the basement must be considered in calculating the 30% expansion limits, and that when this additional area and volume are added into the current calculations, the structure would well exceed the 30% expansion limitations; (2) that according to the Basic Land Use Ordinance Section 13.3, Table 1, conversions of seasonal residences to year-round residences are not allowed in a CF1 district. Adams stated in the memo, "It is the opinion of the Codes Office that if any portion of this structure is within 75 feet of the high water mark, it would be considered in the CF1 District, and therefore may not be converted from seasonal to year-round."

Nannen stated, "You could redesign an entirely conforming structure with a conforming building envelope, and not come to the Planning Board, just go to the Codes Office." He read a portion of SZO 13.2.2.2 (Reconstruction or Replacement) concerning setbacks from the normal (maximum) high water mark. Henderson stated to Waltman, "We want you to be as conforming as possible." Dater told Waltman that the allowable 30% expansion is 30% one time. The Board discussed the relocation issues. Nannen discussed a possible option of moving the existing house, and adding the eliminated shed into the volume of the new structure, etc. He stated, "If you reconfigure the building a little bit, you could conform....To me, you get more value by incorporating the volume of the shed, use the volume it would give you.... It would be an integrated solution here. Work your architectural magic." Waltman stated, "If you bring the building back, the view is blocked by the house next door....It's a large two bedroom house, well, actually one the way it's designed....The best practical spot is where the house is (on the plot plan). If you left it the way it is (as a cottage), you would devalue the property."

Henderson asked the Board what they felt was the best practical approach. Nannen stated, "It's conceivable you could get everything conforming....It seems to me there's room for improvement." Dater stated, "If the applicant wants to do this year - round, he must be back seventy-five feet." Henderson asked if any Board members thought that the proposed location was at the greatest practical, and no Board members responded. Papacosma said that the septic plan the applicant had submitted was dated 1986. Mr. Kusza said that another individual had reviewed the system, and that it was a two hundred-forty gallon system, a little short of a three bedroom system. Kusza said that it was a good system.

Nannen stated, "We always try to get the water setback....The Town's goal in zoning is to have the new construction be conforming. This is a one half acre lot. You have a lot one half the size of our minimum lot requirement. This is a big home being proposed on a small lot. It's a one thousand square foot house to a two thousand six hundred square foot house. That's a one hundred fifty percent expansion! Maybe there's a way to achieve these objectives with a smaller proposal....What it comes down to for me, is the size of the house. It seems to me you could probably achieve all of our objectives if the solution were simply smaller." Waltman stated, "I don't know where that argument comes from." Nannen stated, "In reality that is the case."

Henderson stated, "That's what we're trying to balance here... .You may want to completely redesign the structure."

Waltman asked about the Kuszas being able to build the structure if they only used part of the structure year round. Henderson told him that the Board could not designate certain parts of the structure as year round, and other parts as seasonal. Henderson, stated, "I assume, in a snowstorm, you won't be camping on your deck." Dater read the definition of a structure as contained in the Shoreland Zoning Ordinance Definitions Addendum. Henderson said that according to the ordinances, and especially the ordinance changes approved at the recent Town meeting, a deck is a structure. Nannen showed the Board a rough sketch of what a year-round house could look like if it was within the required setback, and the Board discussed the sketch and other options.

Mr. Kusza stated, "There's no intention of doing anything if it's not year -round." After much discussion by the Board, Henderson said that if the applicants want the structure to be year-round, they must present a plan where the structure is entirely seventy-five feet back from the high water mark. Dater said that the applicants could choose to avail themselves of a Planning Board placement for a seasonal structure. Waltman asked if they could appeal the Planning Board's decision to the Board of Appeals. Nannen stated, "Variances are given only on dimensional requirements. I don't think the Board of Appeals has the authority to approve a use change." Papacosma said that the Board of Appeals is an independent body from the Planning Board. The Board discussed SZO 10.3.2.1 (Relocation) and SZO 10.3.2.2 (Reconstruction or Replacement) again. Henderson stated, "This does not meet the requirements of Shoreland Zoning Ordinance 10.3.2.1." Dater said to Waltman, "If you plan a full basement, you'd have to consider it in the thirty percent expansion." Henderson told Waltman that the Board could table the application if the applicants would like to have time to reconfigure the structure and plan. Waltman and Mr. Kusza agreed that they would like to have the Board table the application. Henderson stated to them, "Come back with a plan that is within the seventy -five foot setback." White stated, "I make a motion that we table the Kusza application to our meeting on September 19th." Nannen seconded. **Carried, 5-0.**

Frederick Cummings III, Reconstruction of Non-Conforming Structure, Commercial Fisheries II, Tax Map 25-107, Harpswell Islands Road, Harpswell-

Ralph Black, Jr. presented the Cummings application, and referenced the revised plot plan, dated August 21, 2001. He said the applicants want to remove the existing home and construct a more conforming structure. He said there is a two to three foot encroachment on the southern setback line. Dater said that, according to the Basic Land Use Ordinance (BLUO) Section 11.1 (Standard Table), if the road existed before the structure is built, the structure must be forty feet back from the road. Henderson wanted to know why Black couldn't move the home so that the two to three foot non-conforming section would be within the setback. Black said that it would be within the ten foot encroachment on the septic field, that there's a steep slope there, and the proposed design seems to be the only feasible location for the home. After the Board discussed SZO Section 10 (Non-Conformance), Henderson stated, "The proposed plan meets the requirements of the ordinance to the greatest practical extent." Toothaker mentioned Planner Richard Seeley's memo dated August 15th in which Seeley stated that the Planning Board approval should be conditioned on a permit for a seasonal conversion from the Licensed Plumbing Inspector.

The Board discussed page thirteen of the SZO Table, and SZO 10.3.2.1 and 10.3.2.2. White stated, "I move that the Board finds that this proposal meets the requirements of the Shoreland Zoning Ordinance Sections 10.2.2.1 and 10.3.2.2." Rogers seconded. **Carried, 5-0.**

Nannen stated, "As a matter of principle, we as a Board should encourage the applicants to work within the ordinances...We're constantly being pushed ...We're supposed to be encouraging conformity, not non-conformity...We have to use care in exercising our discretion. Each case is different and has to be judged on its own merits."

Henderson asked if there was anyone else who would like to address the Board. Chad Blair asked the Board if the previous application (Cummings) was affected by the moratorium on campgrounds and historical sites, buildings, and structures, which had been passed at the recent Town meeting, and if not, why not. Henderson explained that the moratorium affected only campgrounds and historical sites, buildings, and structures, and that the Cummings application did not involve a campground or historical site, building, or structure.

The Board reviewed the draft of their by-laws. The Board would like to have the Town attorney, the Codes Office, the Planning Department, and the Selectmen review the draft by-laws and offer their input.

Toothaker stated, "I make a motion to adjourn." Nannen seconded. **Carried, 5-0.** Henderson adjourned the meeting at 10:05pm.

Respectfully submitted,

Debora A. Levensailor, Planning Assistant